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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,749	04/03/2006	Paolo Giubbini	2789-63	1788

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EXAMINER
WONG, ALBERT KANG

ART UNIT	PAPER NUMBER
2612	

MAIL DATE	DELIVERY MODE
08/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/564,749	GIUBBINI, PAOLO
	Examiner	Art Unit	
	ALBERT K. WONG	2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _29 April 2008_.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-21_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-21_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on _17 January 2006_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☒ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

1.   This Office action is in response to the amendment filed April 29, 2008. Claims 1-21 are

pending. The amendment has been entered as requested. The prior rejections have been

modified to address the amendment to the claims, however, the basis premise of the rejections

are essentially the same.

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

3.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness
   or nonobviousness.

4.   Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Argyroudis

(5,892,758) in view of Holowick (6,710,721).

        Regarding claim 1, Argyroudis teaches the claimed method of remote metering of the

consumption of utilities (col. 1, lines 18-20) distributed through a public distribution network

(col. 1, lines 18-25) where each consumer is associated with alt least one remote meter (fig. 3).

The plurality of remote meters measures consumption and reports the data to a concentrator

associated with the plurality of meters via communication with the concentrator. The

concentrator also performs administrative tasks (col. 1, lines 32-36). Each of the remote meters

has a host controller and a program memory for executing programs stored in the memory (col. 10, lines 41-54). The concentrator performs the task of transmitting program data to at least one of the remote meters and the remote meters performs the operation of receiving the program data and updating at least a portion of the program in the memory. Argyroudis does not explicitly teach that the transmission of program data comprises successively sending data messages that comprise portions of the program data, or information defining a sequence of program instructions. Since the system in Argyroudis uses a conventional packet switched network, it would have been obvious to send the program as a series of packets since the network is unable to accommodate a burst of data that would constitute a program.

Holowick teaches a remote meter in communication with a concentrator. Col. 3, lines 1-5 teaches the reception of data to update the "internal software via downloading through a transceiver." One of ordinary skill in the art would recognize that software defines a sequence of program instructions.

Regarding claim 2, the sending of commands to an individual meter by or a group of meters by address is conventional. It would have been obvious to send program data via a similar form to achieve the same objective.

Regarding claim 3, it would have been obvious to include a program update message so that the meters would understand the nature of the command and perform the desired function.

Regarding claims 4-5, these messages are considered conventional commands to control the operation of the system and thus, would have been obvious to one of ordinary skill.

Regarding claims 6-16, these steps are considered conventional in computer based systems, and thus, obvious since they would be known to one of ordinary skill in the art and

would be implemented to perform the desired function. Claim 6 recites a file transfer protocol.

Claim 7 recites a request for acknowledgement and the resending of data upon failure. Claim 8

recites repeating a query until it is successful. Claim 9 recites the use of acknowledgement and

the inhibition of further queries. Claim 10, recites an acknowledgement message. Claim 11

recites the use of a buffer memory. Claim 12 recites the use of a non-volatile memory. Such

memory is used to retain data in the absence of power. Claim 13 recites the step of error

checking before and after storage of the received data. Claim 14 recites the use of bootstrap to

perform software loading. Claims 15-16 recite the use of flags to indicate status.

Regarding claim 17, Argyroudis teaches in col. 6, lines 4-7 the use of power lines to

communicate with meters.

Regarding claim 18, see col. 1, lines 16-25 of Argyroudis.

Regarding claim 19, col. 2 of Holowick describes the use of remote meters and

concentrators. The functional steps have been addressed in the prior claims.

Regarding claim 20, the structural limitations have been addressed above with the

exception of the communication interface and the microcontroller. The communication interface

is inherent since this is required for communication. The microcontroller is well known in the

art for processing data in digital system. The inclusion of conventional means for their known

function would have been obvious to one of ordinary skill in the art.

Regarding claim 21, this claim merely recites the meter for communicating with the

system in the desired manner as recited in claim 1. Since the method has been shown to be

obvious, the end point which performs according to the method would also have been obvious.

Remarks

5.   Applicant has presented several arguments pertaining to the patentability of the claims.

The Examiner, however, has found the arguments not persuasive.

        First, applicant argues that Argyroudis does not teach the transmission of program data

defining a sequence of instruction to a remote meter. The Examiner agrees with this assertion

since the citation of Holowick is used to teach this concept. Applicant argues that Holowick also

fails to teach this claimed limitation since in his opinion the cited passage is "unclear." And that

software could simply be data. The Examiner disagrees. Holowick states: "The programming

module comprises a transceiver adapted to provide data to a diagnostic and programming device

indicative of operating characteristics of the device, including any changes of device

performance, battery levels, and further allowing the reception of data such as to update of

internal software via downloading through the transceiver when desired." Emphasis added.

Thus, the passage refers to gathering data to be sent to the collector, but also allows the reception

of data in the form of internal software. Software may be data but it is a special form of data. In

fact, in claim 1 applicant recites: "program data including information defining a sequence of

program instructions." Information is synonymous with data. To further support his position,

the Examiner cites two references from Wikipedia. The first citation was published prior to

applicant's effective filing data. Although the second citation was edited after the filing data, it

should still be considered prior art since the definition would be that known prior to applicant's

invention. Wikipedia defines software as: a generic term for organized collections of computer

data and instructions, often broken into two major categories: system software that provides the

basic non-task specific functions of the computer, and application software which is used to

accomplish specific tasks. System software is responsible for controlling, integrating, and managing individual hardware components of a computer system".

This definition would include a sequence of program instructions. The device in Holowick would include a processor that performs the function of a computer and would control individual hardware components for performing task such a data transmission and reception as well as data gathering functions from the meter monitored. Therefore, applicant's argument is not persuasive.

Applicant further argues that the Clark reference does not teach the limitation pertaining to a sequence of program instructions and that this reference is inapplicable since the PCT report merely cited this as an "A" reference. This argument is rendered moot since this reference has been removed from the rejection. The mere fact that a reference is cited on a PCT report indicates that is has some relevance with respect to the invention. It does not preclude its application within a rejection in a limited context. An "A" designation merely indicates that in on Examiner's judgment this reference does not rise to the level of anticipation or obviousness. Further, such a judgment is not binding on the determination of a different Examiner or even the instant Examiner at a later date.

6.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

7.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to ALBERT K. WONG whose telephone number is (571)272-3057.

The examiner can normally be reached on M-Th.

          If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Brian A. Zimmerman can be reached on 571-272-3059. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

          Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

                                                            /Albert K Wong/
                                                            Primary Examiner, Art Unit 2612

August 12, 2008